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In re Application of
Joseph Anderson
Application No. 10/629,158
Filed: July 29, 2003
Attorney Docket No. JRAC-0001

OFFICE OF PETITIONS

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: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3)
: AND 37 CFR 1.78(a)(6)

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed March 8, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120, 365(c) and 119(e) for the benefit of the prior-filed PCT Application No. PCT/US02/02425, filed January 30, 2002, and provisional Application No. 60/264,906, filed January 30, 2001.

The petitions are **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6).

The instant pending nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed provisional application is submitted after expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6).

The petition complies with the requirements for a grantable petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been

benefit of priority under 35 U.S.C. §§ 120, 365(c) and 119(e) to the above-noted, prior-filed applications satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), the petition is granted.

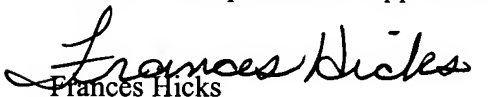
The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 365(c) and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The matter is being referred to Technology Center AU 1722 for consideration by the examiner of the claim under 35 U.S.C. §§ 120, 365(c) and 119(e) for the benefit of priority to the above-noted, prior-filed PCT and provisional applications set forth in the amendment filed on April 9, 2004.


Frances Hicks
Petitions Examiner
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for Patent Examination Policy

cc:

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ATTACHMENT: Corrected Filing Receipt